

*Lib.*

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
CITY OF CENTRALIA,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 84-287

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a penalty of \$5,000 for the alleged discharge of leachate from a sanitary landfill in violation of the State Water Pollution Control Act (RCW 90.48) came on for a formal hearing before the Pollution Control Hearings Board, Gayle Rothrock and Lawrence J. Faulk (presiding), on January 31, 1985, at Lacey, Washington.

Appellant was represented by City Attorney Donald F. Pietig. Respondent Department of Ecology (DOE) was represented by Charles K. Douthwaite, Assistant Attorney General. Reporter Jane Johnson

1 recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From  
3 the testimony heard and the exhibits examined, the Board makes these

4 FINDINGS OF FACT

5 I

6 The City of Centralia owns and operates a sanitary landfill which  
7 lies along an unnamed ditch in Lewis County, tributary to Salzer Creek.

8 II

9 Salzer Creek is a natural watercourse tributary to the Chehalis  
10 River which is designated as class "A" waters of the state of  
11 Washington. WAC 173-201-(9).

12 III

13 An inspector from the DOE visited the site November 16, 1983, and  
14 noticed NW and NE corner discharges and eight west face flow-over  
15 points. A discharge of leachate from the City's sanitary landfill  
16 entered into the unnamed ditch.

17 IV

18 On that same date DOE's water quality inspector took two samples  
19 of the discharge. One sample was taken on the west side of the  
20 landfill and another sample was taken on the eastern face of the  
21 landfill. Laboratory analysis showed substantially elevated numbers  
22 of fecal coliform organisms in the sample from the west side of the  
23 landfill, the active face and the side where the discharge flows into  
24 the unnamed ditch. The discharge on the west side showed fecal  
25 coliform levels far exceeding the pertinent water quality standard.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 84-287

1 (See WAC 173-201-045(2)(c)(i)(A), WAC 173-201-070(6).)

2 V

3 This landfill has been the subject of DOE regulatory activity  
4 since 1976. On November 24, 1976, a notice of violation and a \$300  
5 penalty for disposal of wastes by the landfill into ground water was  
6 issued by the DOE to the City of Centralia. The stipulated agreement  
7 approved, by this Board, required, in part, design and construction of  
8 a leachate control system.

9 VI

10 After the 1976 episode the City of Centralia made some efforts to  
11 improve the system for controlling the landfill's discharge of  
12 wastes. However, the leachate control system was not constructed.  
13 The City was actually ordered to submit full and sufficient plans  
14 November 1, 1982 (DE 82-108).

15 VII

16 On January 14, and July 21, 1982, notices of violation, orders and  
17 penalties were issued by the Department for discharge of leachate into  
18 Salzer Creek. The stipulated agreements (PCHB No. 82-115 and 82-116)  
19 approved by this Board required, in part, the design and construction  
20 of a leachate control system. The plans still have not been approved  
21 by the Department, because it still views them as unacceptable for  
22 full leachate control.

23 VIII

24 Since the events of 1976 the City has expended significant amounts  
25 of time and money to alleviate drainage problems on their landfill and

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 84-287

1 to eliminate the discharges from that facility. Plans have been  
2 prepared and submitted to DOE. There is an eight-year history  
3 (1977-1984) which indicates that the City and Department have made  
4 efforts to improve the operation of the landfill. Progress has been  
5 made. But the leachate control system on the west side of the  
6 landfill is still not in place in 1985.

7 IX

8 On May 17, 1984, DOE issued an order and notice of civil penalty  
9 to the appellant imposing \$5,000 fine for the alleged violation of RCW  
10 90.48.080 on November 16, 1983. The City possesses no waste discharge  
11 permit authorizing the disposal of wastes from the landfill into  
12 waters of the state.

13 X

14 On June 1, 1984, DOE received an application for relief from  
15 penalty pursuant to RCW 90.48.144. This application was carefully  
16 reviewed and denied. The penalty was affirmed by a notice dated  
17 October 3, 1984. The instant appeal to this Board followed on October  
18 18, 1984.

19 XI

20 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
21 adopted as such.

22 From these Findings of Fact, the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 The waters of Salzer Creek are waters of the State. RCW 90.48.020.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 84-287

1 II

2 RCW 90.48.080 states:

3 It shall be unlawful for any person to throw, drain,  
4 run, or otherwise discharge into any of the waters of  
5 this state, or to cause, permit or suffer to be  
6 thrown, run, drained, allowed to seep or otherwise  
7 discharged into such waters any organic or inorganic  
8 matter that shall cause or tend to cause pollution of  
9 such waters according to the determinatin of the  
10 [DOE], as provided in this chapter.

11 III

12 The discharge from the west side of the landfill consisted of  
13 fecal coliform levels far exceeding the pertinent water quality  
14 standard. WAC 173-201-045(2)(c)(i)(A). Such standards reflect the  
15 determination of DOE as to what constitutes pollution. RCW 90.48.035.

16 IV

17 Appellants violated RCW 90.48.080 by permitting the discharge of  
18 leachate to waters of the state which exceeded the water quality  
19 standard for fecal coliform in Class "A" waters.

20 V

21 RCW 90.48.144 provides for the issuance of civil penalties in an  
22 amount up to \$5,000 per day for violation of the provisions of RCW  
23 90.48.080. The imposition of a penalty in this instance was lawful.

24 VI

25 When a penalty may lawfully be imposed, the appropriateness of its  
26 amount is a matter involving consideration of factors bearing on its  
27 reasonableness. These include:

- 1           a)    The nature of the violation;  
2           b)    The prior behavior of the violator;  
3           c)    Actions taken after the violation to solve the  
              problem.

#### 4                               VII

5           The nature of the violation encompasses such matters as the  
6           duration of the offense, the type of requirement violated, and the  
7           consequences of the violation. Here, though the penalty imposed is  
8           solely for November 16, 1983, the unlawful discharge has been  
9           occurring for eight years. The violation was not of a  
10          technology-based effluent limitation, but rather a standard for the  
11          receiving waters, designed to protect the creek from environmental  
12          harm.

#### 13                           VIII

14          The prior behavior of the violator involved previous offenses for  
15          the same violation for which smaller penalties were imposed. After  
16          these earlier violations, some remedial steps were taken, but the  
17          problem has not been solved and the City is aware that this is the  
18          case.

#### 19                           IX

20          However, since the events at issue here, the City has taken some  
21          action to improve drainage in an attempt to prevent any recurrence of  
22          unlawful discharges to Salzer stream.

#### 23                           X

24          Looking at the entire array of facts and circumstances, the  
25          imposition of a \$5,000 penalty, the statutory maximum, is not  
26          unreasonable, particularly in light of the eight-year history of

1 attempting to design and construct an effective leachate control  
2 system for the west side of the landfill.

3 XI

4 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
5 adopted as such.

6 From these Conclusions, the Board enters this


7 ORDER

8 Civil Penalty No. DE 84-312 is affirmed.

9 DATED this 12<sup>th</sup> day of March, 1985.

10 POLLUTION CONTROL HEARINGS BOARD

11  3/12/85  
12 LAWRENCE J. FAULK, Chairman

13  
14   
15 GAYLE ROTHROCK, Vice Chairman

16  
17 (Did not participate)  
18 WICK DUFFORD, Lawyer Member

19  
20  
21  
22  
23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 84-287